IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

C. P. NO. 359 OF 2006
in
Writ Petition No. 7329 of 2004.

Smt. Shanta Anil Sutar .. ... Petitioner
V/S
Shri S.Y. Kapse and ors. . ... Respondents

MR. S. G. KUDLE for petitioner

CORAM: D. G. KARNIK **J.**

DATE: 21th November 2006

P.C.:

1. Heard learned counsel for the petitioner.

2. By this contempt petition the petitioner alleges that the respondents have committed breach of the order of this court dated 27th June 2005 passed in Writ Petition No. 7329 of 2004.

3. Writ Petition No. 7329 of 2004 was filed by the petitioner for quashing the order dated 12th July 2003 issued by the respondent no. 4 and for reinstatement to the post of Assistant Teacher at Basic Ashram School. By an order of

this court dated 27th June 2005 the petition was partly allowed in terms of prayer clause (b). The respondent no.3 was directed to see that the petitioner was reinstated in the school at Vairag, Taluka : Barsi, Dist. Solapur and was allowed to join with effect from 1st July, 2005. According to the petitioner she was allowed to join the duty with effect from 1st of July 2005 but she has not been paid the salary. The petitioner claims that non payment of salary amounts to breach of the order of the court and hence a contempt.

4. It is true that salary is an incident of service and an employee must be paid salary. However, if the employee is not paid the salary he has several remedies. He may file a suit for recovery of the salary. In some cases, he may be entitled to file a writ petition for payment of the salary. If, therefore, the petitioner has not been paid the salary her remedy is to take out appropriate proceedings for recovery of the salary, like any other employee. She is not in a better position than an employee whose services are not terminated but who is not paid the salary. Merely because she has been reinstated by an order of the court the petitioner is not in a better position than that of an ordinary employee. Contempt, in my view, is therefore not the remedy.

5. Learned counsel for the petitioner submits that the letter of

reinstatement issued by the respondent is for a specific period of one year and the petitioner is issued separate letters every year. It is not possible to ascertain as to what were the the initial terms of appointment of the petitioner. The order of reinstatement contemplated reinstatement under the initial terms. If initial terms were also of appointment for year to year it can not be said that there is a deliberate breach of the order of the court. In any event it is open to the petitioner to and take out appropriate proceedings for a declaration that the year to year appointment is a continuous appointment, and that she has acquired status of a permanent teacher.

6. For these reasons there is no merit in the contempt petition which is hereby dismissed summarily.

(D.G. KARNIK J.)